

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 12, 2021 at 11:00 a.m.

1. [19-25168-E-7](#) **MATHEW LAKOTA**
[19-2140](#)
LUCAS V. LAKOTA

**PRE-TRIAL PRO SE REVIEW
CONFERENCE RE: COMPLAINT
11-14-19 [\[1\]](#)**

Plaintiff's Atty: Raymond L. Sandelman

Defendant's Atty: Pro Se

Adv. Filed: 11/14/19

Answer: 11/26/19

Nature of Action:

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - wilful and malicious injury

Notes:

Set by order of the court filed 7/30/21 [Dckt 40]. Any supplemental pleadings by Mathew Lakota, the Defendant-Debtor, identifying any issues relating to his failure to file a Pretrial Conference Statement, or witnesses or documentary evidence he believes he would be presenting at trial shall be filed on or before 8/6/21.

The Pro Se Review Conference is xxxxxxx

On March 3, 2021, the court conducted a Pretrial Scheduling Conference in this Adversary Proceeding. At that Pretrial Scheduling Conference, the court set the deadlines for the filing of direct Testimony Statements (L.B.R. 9017-1), Trial Briefs, Evidentiary Objections, and Responses to Evidentiary Objections. Civil Minutes, Dckt. 26. The Civil Minutes reflect that Counsel for Plaintiff was present, but not the *pro se* Defendant-Debtor. Defendant-Debtor was present at the January 6, 2021 Pretrial Conference (which was continued due to the COVID-19 limitation on access to the court) which was continued to March 3, 2021.

The Pretrial Conference was continued to July 22, 2021, for the setting of the trial date. Counsel for Plaintiff was present at the July 22, 2021 trial setting conference, but Defendant-Debtor was not. Civil

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Minutes, Dckt. 37. The court set the trial for September 29, 2021, with a separate trial setting order being issued by the court.

In reviewing the Docket for this Adversary Proceeding, it appears that due to a clerical error a written order was not issued stating the dates and deadlines for lodging with the court and exchanging the Direct Testimony Statements, Trial Briefs, and Evidentiary Objections and Replies.

Defendant-Debtor did not file a Pretrial Conference Statement as required in which witnesses and documentary evidence for that party's case in chief must be identified. Scheduling Order, Dckt. 18.

In light of Defendant-Debtor being in *pro se* and to ensure that he has the opportunity to present direct testimony statements for witnesses and documentary evidence, if his failure to file a Pretrial Conference Statement was in error, the court set this special *Pro Se* Review Conference. Order, Dckt. 40.

At the Review Conference, **XXXXXXX**

Final Ruling: No appearance at the August 12, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor on June 16, 2021. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss Adversary Proceeding (FTW-1) is dismissed without prejudice.

Plaintiff-Debtor having filed a First Amended Complaint and Defendant Clear Recon Corp. having filed on August 5, 2021 a Motion to Dismiss First Amended Adversary Complaint (Dckt. 33; FTW-2).

Clear Recon Corp. (“Defendant”) moves for the court to dismiss all claims against it in Maria Andrichuk’s (“Plaintiff-Debtor”) Complaint according to Federal Rule of Civil Procedure 12(b)(6). The Motion was filed on June 16, 2021. Plaintiff then filed an Amended Complaint on July 13, 2021. Dckt. 20.

On August 5, 2021, Defendant filed a Motion to Dismiss the Amended Complaint. Dckt. 32. The Defendant pursuing a dismissal of the Amended Complaint, the Motion to Dismiss the original Complaint is rendered moot.

The court dismisses the Motion to Dismiss without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Complaint (Dckt. 1) filed by Clear Recon Corp. ("Defendant") having been presented to the court, Plaintiff having filed an Amended Complaint (Dckt. 20), Defendant having filed a Motion to Dismiss the Amended Complaint (Dckt. 32) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Complaint (Dckt. 1) is dismissed without prejudice as moot.